Office of Surface Mining Reclamation and Enforcement

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is requesting comments as to whether the Abandoned Mine Land (AML) Reclamation Program Final Guidelines, published March 6, 1980 (45 FR 14810–19), should be revised, and if so, what specific revisions need to be included.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on July 21, 1995.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 10–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

Comments may also be sent through the Internet to OSM's Administrative Record, Internet address: OSMRules@OSMRE.GOV. Copies of any messages received electronically will be filed with the Administrative Record.

FOR FURTHER INFORMATION CONTACT: Norman Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2949 or 208–5365.

SUPPLEMENTARY INFORMATION: In 1980, OSM published AML Reclamation Program Final Guidelines (45 FR 14810, March 6, 1980) for reclamation programs and projects. These guidelines were intended to assist States, Indian tribes and OSM in interpreting and applying the general reclamation requirements for individual programs and projects contained in the Surface Mining Control and Reclamation Act (SMCRA) and the AML program regulations. These guidelines were designed to promote uniformity in programs and projects that are carried out by different entities assigned the responsibility for administering AML programs and to provide a common basis for the conduct of program and project evaluation activities.

The 1980 guidelines currently contain several outdated citations and other provisions due to legislative revisions to Title IV of SMCRA as well as policies adopted by OSM since 1980. Therefore, OSM is considering whether to revise the guidelines, and if so, what specific revisions and updates to incorporate. Toward this end, OSM requests all interested parties and organizations to provide any relevant comments related to this contemplated revision.

All comments will be analyzed and considered by the agency in making the determination of whether to revise the existing guidelines. If a decision is made to proceed with revision of the guidelines, appropriate comments will be incorporated into the revised guidelines to the fullest extent possible.

Dated: May 15, 1995.

Robert J. Uram,

Director.

[FR Doc. 95–12436 Filed 5–19–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade; Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: June 16, 1995, 10:00 am—12:00 noon, U.S. Department of Labor, Room N–4437 C&D, 200 Constitution Ave. NW., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, D.C. this 17 day of May, 1995.

Joaquin Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 95–12503 Filed 5–19–95; 8:45 am]

BILLING CODE 4510–28–M

Pension and Welfare Benefits Administration

[Application No. D–09878, et al.]

Proposed Exemptions; Tenneco, Inc. Health Care Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Tenneco, Inc. Health Care Plan (the Plan) Located in Houston, Texas

[Application No. D–09878]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act shall not apply to the proposed contribution to the Plan of common stock (the Stock) of Tenneco, Inc. (Tenneco) by Tenneco or any of its subsidiaries, provided the following conditions are satisfied: (a) The Plan will dispose of the Stock received within 2 business days of receipt, either by sale on the open market or by sale to Tenneco; (b) any sale of the Stock from the Plan to Tenneco will comply with conditions (1) and (2) of section 408(e) of the Act; and (c) Tenneco will pay any and all transactional costs for any sales by the Plan on the open market.

Summary of Facts and Representations

1. Tenneco is a Fortune 50 company, the Stock of which is traded on the New York Stock Exchange (the NYSE). The major businesses of Tenneco include the transportation and sale of natural gas, the manufacture and sale of farm and construction equipment, and the manufacture and sale of automotive exhaust system parts. Tenneco is a Delaware corporation which has its principal office in Houston, Texas.

2. The Plan is a voluntary employees' beneficiary association as described in section 501(c)(9) of the Code. The Plan pays for medical and dental benefits for employees and former employees of Tenneco and its participating domestic subsidiaries. The Plan has never accumulated reserves; benefits are paid by Tenneco through the Plan on a pay-as-you-go basis.

3. In 1992, Tenneco created the Tenneco Inc. Stock Employee Compensation Trust (the SECT). The SECT is not subject to the Act. The purpose of the SECT is to hold Stock which may be used to defray compensation and benefit obligations of Tenneco and its subsidiaries, including medical and dental benefits. The applicant represents that shares of Stock available under the SECT exceed the number of shares that Tenneco had anticipated would be needed for compensation and benefit purposes. The applicant represents that, for reasons of Delaware corporate law, the SECT may not sell more than 10% of the shares of Stock originally held by it. However, this limit applies only to sales, and there is no limit to the amount of Stock in the SECT which may be used for compensation and benefit purposes. The applicant represents that if the Stock is contributed to the Plan which, in turn, sells the Stock to Tenneco or on the open market, such transactions do not cause a violation of the 10% limit imposed on the SECT.

4. Tenneco proposes to contribute Stock from the SECT to the Plan. Upon such contribution, the Plan will immediately sell the Stock on the open market or to Tenneco. The applicant represents that the Plan will dispose of the Stock received within 2 business days of receipt. In fact, it is Tenneco's intention that the Plan will dispose of the Stock as soon as possible, which the applicant anticipates will generally be a matter of hours or perhaps overnight after receipt.

5. If the Plan sells the Stock to Tenneco, the applicant represents that the sale will be at a sale price equal to the price prevailing on the NYSE at the time of the sale to Tenneco. If the Plan sells the Stock on the open market, Tenneco will pay any and all transactional costs associated with such sales. The Plan will use the cash it receives for the Stock to pay medical and dental benefits under the Plan. This transaction may be done as often as needed to pay benefits. The applicant represents that it anticipates using approximately 691,000 shares of Stock for Plan expenses in 1995. It is anticipated that contributions would be made by the SECT to the Plan either weekly or bi-weekly, based upon projected expenses. In 1994, the average daily volume of trading of Tenneco Stock was approximately 540,000 shares per day. Because the number of shares of Stock involved in the proposed transaction is small compared to the general trading volume of Tenneco shares, the applicant represents that it anticipates there should be no effect on the market price of the Stock as a result of the proposed transaction.

6. The applicant represents that any sale of Stock by the Plan to Tenneco will comply with conditions (1) and (2) of Act section 408(e), because the sale will be for adequate consideration, and no commissions will be charged in connection with the sale. However, the applicant represents that the exemption proposed herein is needed for the subject transaction because the Stock being contributed to the Plan will constitute more than 10% of the Plan's assets in violation of sections 406(a)(2) and 407(a) of the Act. Tenneco represents that it could contribute a small amount of cash to the Plan and make a succession of small contributions of Stock by the SECT immediately followed by sales thereof in such a manner that the Stock would never represent more than 10% of the assets of the Plan. The applicant believes that this would be in compliance with Act section 407(a). However, such a procedure would be burdensome, and it would be advantageous for Tenneco to be able to make contributions of Stock to the Plan under the safeguards proposed without regard to the 10% limit of section 407(a) of the Act.

7. In summary, the applicant represents that the proposed exemption satisfies the criteria contained in section 408(a) of the Act because: (a) The Plan will dispose of the Stock received within 2 business days of receipt either by sale on the open market or to Tenneco; (b) any sale of Stock by the Plan to Tenneco will comply with conditions (1) and (2) of section 408(e) of the Act; and (c) Tenneco will pay any and all transactional costs for any sales by the Plan on the open market.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Construction Laborers Pension Trust for Southern California (the Trust) Located in El Monte, California

[Exemption Application No. D–09932]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective December 22, 1989, to the leasing (the Lease) of space in a commercial office building (the Property) owned by 4401 Santa Anita Corporation (the Corporation), a corporation that is wholly-owned by the Trust, to American Benefit Plan Administrators, Inc. (ABPA), a party in interest with respect to the Trust.

This proposed exemption is conditioned on the following requirements: (1) The terms of all such leasing arrangements have been, and will remain, at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party; (2) an independent, qualified fiduciary determined, at the Lease's inception, that it was in the best interests of the Trust and its participants and beneficiaries; (3) An independent, qualified fiduciary has monitored and will continue to monitor the Lease for the Trust and the terms and conditions of the exemption; and (4) the rental charged by, and paid to, the Corporation under the Lease has been, and will continue to be, the fair market rental value of the premises as determined by an independent, qualified appraiser.

EFFECTIVE DATE: If granted, this proposed exemption will be effective December 22, 1989.

Summary of Facts and Representations

1. The Trust is a multiemployer plan that covers employees of construction contractors in Southern California. Such contractors include developers, builders, construction managers and owner-builders. The Trust is jointly-administered by sixteen trustees (the Trustees), eight of whom are appointed by multiemployer trade associations representing employers contributing to the Trust and eight of whom are designated by the Southern California District Council of Laborers (the Union). Since 1989, various investment managers have had investment discretion over the assets of the Trust.

2. As of December 31, 1990, the Trust had approximately 20,000 participants and total assets of $671,079,119. The Trust is one of four affiliated Laborer Trusts for Southern California (the Laborer Trusts). The other affiliated Laborer Trusts include the Laborer's Health and Welfare Trust for Southern California, the Construction Laborer's Vacation Trust for Southern California (the Vacation Trust), and the Laborer's Training and Retraining Trust for Southern California.

3. In an effort to relocate the Trusts' operations, Mitchell Hutchins Institutional Investors, Inc. (MHII), as investment manager, executed a purchase and sale agreement, on behalf of the Trust, with an unrelated party to acquire the Property in 1989.[1] The Trust's purchase of the Property coincided with the expiration of several leases of potential tenants, including various parties-in-interest. These potential tenants/parties-in-interest consisted of ABPA, which serves as the Trust's plan administrator, the Collection Office of the Laborers' Trust Funds for Southern California (the Collection Office) and the Union.[2] Prospective additional tenants included the Joint Apprenticeship Committee of the Laborers Training and Retraining Trust for Southern California (the Apprenticeship Committee), an operation newly-created through collective bargaining in 1988 and set to begin operations in 1989, and the Center for Contract Compliance (the Center), a jointly-trusteed, labor-management cooperation committee established through collective bargaining in 1988 for the purpose of monitoring employer compliance with the prevailing wage laws for public works in Southern California. The Trustees overlap to some extent with the trustees of the other trusts.

4. The Property, located within the Airport Business Park at 4399 and 4401 Santa Anita Avenue in El Monte, California, consists of two identical, 32,196 square foot, wood and steel frame office buildings and the underlying land. John J. Archer, ASA, a independent real estate appraiser located in Pasadena, California, appraised the Property prior to its purchase (the Appraisal). Mr. Archer has been involved in appraising all types of residential, commercial and industrial properties since 1953. Mr. Archer also placed the fair market value of the Property, as of February 9, 1989, at $6,800,000. In determining the fair market value of the Property, Mr. Archer gave considerable weight to the income approach of valuation due to the fact that the Property is income producing real estate. Mr. Archer also placed the fair market rental value of the Property for a net lease at $1.15 per square foot per month. At the time of the Appraisal, the Property did not have finished interior rental space.

5. Upon its acquisition, the Property became an asset of the Corporation, which is wholly-owned by the Trust. Due to the unfinished interior of the rental space, the officers of the Corporation, each of whom has extensive experience in the construction industry, interviewed potential construction managers and retained Gibeon, Inc., an unrelated party, to oversee and assist the Corporation in the build-out of the Property.

6. In early 1989, John S. Miller, Jr., Eva Marie Herhusky and John Berry (the Negotiators), all of Los Angeles, California, represented the Corporation in a series of negotiations with ABPA concerning the Lease. ABPA's space needs were primarily related to its servicing of the administrative needs of the Trust. However, its personnel also administer certain other client trusts in the Los Angeles area and its computer facility services all of its clientele nationwide.

7. Prior to the Lease negotiations, ABPA had been actively soliciting new space for its operations and had settled upon space in the Equitable Plaza (Equitable Plaza) on mid-Wilshire in Los Angeles. ABPA's professional leasing agent had negotiated the terms and conditions of a ten-year gross lease on an arm's length basis with the owner of Equitable Plaza to the point that a letter of intent was ready for execution. Such terms and conditions included the rental of approximately 41,000 to 42,000 square feet at a rate of $21.60 per square foot per annum for the first five years (or $1.80 per square foot per month) and $24.00 per square foot per annum for the final five years (or $2.00 per square foot per month) with tenant improvements provided by the landlord at $35.00 per square foot. Additionally, the landlord offered to provide twenty-four months free rent from the commencement of the lease. This proposed lease required ABPA to share

[1] The Department expresses no opinion in this proposed exemption as to whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the Property.

[2] The Collection Office is a combined delinquency collection operation of the Laborer Trusts. Even though the Collection Office is operated under the auspices of the Vacation Trust, it is, in all respects, a shared administrative operation with the Laborer Trusts participating in its costs and management on a pro-rata basis.

in any increases in the actual operating costs of the building on a pro-rata basis.

8. In the Lease negotiations, ABPA, on one hand, was attempting at a minimum to match the lease terms it had negotiated with Equitable Plaza. ABPA contended that it should receive better terms from the Corporation because the Equitable Plaza, a 35-story Los Angeles high rise, was a higher quality, more valuable leasehold for ABPA than a leasehold in the Airport Business Park, a low-rise facility in a residential suburb outside Los Angeles. The Negotiators, on the other hand, were attempting to obtain a lease that was at ''market rates'' for the area in which the Airport Business Park is located.

9. In negotiating the terms of the Lease, the Negotiators relied on the Appraisal and two reports prepared by Mr. Archer which discussed the general concessions and improvements which landlords would typically offer to prospective tenants in order to secure a lease. Such reports included detailed discussions of the common practice of offering free rent for a period of time, the payment of utilities, tenant improvement allowances and probable normal expenses. By letter dated April 12, 1989, Mr. Archer opines that a typical owner of a new office building which was of good quality would expend $20 to $22 per square foot to finish out the building for tenant occupancy depending generally on the size of the area finished at one time. The applicants represent that this $20 to $22 per square foot cost estimate represents the expenditure that landlords would typically invest out of their own pockets without increasing their normal ''market rate of rent'' to a given tenant. The applicants further represent that once this number is exceeded, the landlord is likely to increase the normal rate of rent in order to recoup the higher costs of preparing the space.

By letter dated September 14, 1989, Mr. Archer estimates that the total operating and fixed expenses per annum would be $401,400 or $6.51 per square foot per annum (or 54.3 cents per square foot per month). Mr. Archer prepared such estimate based upon data for suburban office buildings from 50,000 to 100,000 square feet from the 1989 Building Office Management Association (BOMA) Experience Exchange Report, a compilation of office building data and surveys done for BOMA's members.

10. The Negotiators represent that, during the Lease negotiations, they used the tenant improvement allowance estimate of $20 to $22 per square foot as a bench mark to determine whether the rate of rent negotiated was at least equal to the market rate of rent for similar buildings in similar areas. In addition, ABPA was negotiating for a full service, gross lease, a lease in which all operating and fixed expenses are paid by the landlord and passed through to the tenants in the form of a higher rate of rent per square foot. In order to ensure that the increased cost to the Corporation had been passed on to ABPA through an appropriately higher rate of rent, the Negotiators used the $6.51 per square foot per annum estimate as a basis to calculate the annual cost of the total operating and fixed expenses for which the Corporation would be assuming responsibility. The applicant represents that eventually the Lease terms and conditions were finalized at market levels.[3]

Once this was accomplished, similar lease proposals were made to the Collection Office, the District Council, the Apprenticeship Committee and the Center.[4]

11. The primary provisions of the Lease include the rental of approximately 43,246 square feet at a rate of $2.045 per square foot per month for a term of ten years (or $24.54 per square foot per annum). As a full service gross lease, the landlord remains responsible for all fixed and operating expenses. However, the terms of Lease provide that ABPA is required to share in any increases in the actual operating costs of the Property on a pro-rata basis. In addition, the Lease provides that if the Trust and ABPA cancel their administrative contract at the end of the fifth year of the Lease or thereafter, either party has the right to terminate the Lease with six months written notice. Upon such termination, ABPA is to reimburse the Corporation for the unamortized value of ABPA's special improvements but such amount is not to exceed the lesser of $500,000 or one-half of the unamortized value of ABPA specific improvements.

The Lease does not provide for a tenant improvement allowance; however, the Corporation is required to construct all tenant improvements, including the tenant-specific improvements. The cost of such improvements is included in the Lease payments at a capitalization rate of 9.5 percent over the term of the Lease or 23.5 cents per square foot per month (or $2.82 per square foot per annum).

12. Prior to 1988 and through May 1990, MHII served as the independent, qualified fiduciary for the Trust with respect to the Lease (MHII's Fiduciary Period). By letter dated December 30, 1993, C. Gary Morris, Vice President of MHII, represents that MHII was an investment manager with the meaning of Section 3(38) of the Act. Mr. Morris represents that both he and MHII were unrelated to, and independent of, ABPA during MHII's Fiduciary Period. Mr. Morris states that MHII understood and acknowledged its duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Trust.

Mr. Morris represents that MHII was familiar with the terms of the Lease and all of the documents and relevant information in connection with the Lease, including the Appraisal. Mr. Morris states that the terms of the Lease compared favorably with the terms of similar transactions between unrelated parties and was an arm's length transaction as evidenced by the Appraisal.

MHII reviewed the investment portfolio of the Trust as well as its diversification and liquidity needs. Based on this analysis, Mr. Morris represents that MHII believed that the Lease was in the best interests of the Trust and its participants and beneficiaries. Mr. Morris states MHII considered the Lease as an appropriate and desirable investment for the Trust, based on the Lease's rate of return, the stability of the tenant, the character and diversification of the Trust's other assets, and the projected liquidity needs of the Trust.

MHII was responsible for monitoring the Lease throughout MHII's Fiduciary Period and was willing to take any appropriate action necessary to protect the interests of the Trust and its participants and beneficiaries.

From July 1990 to July 1991, Am Cal served as the independent, qualified fiduciary for the Trust with respect to the Lease (Am Cal's Fiduciary Period). By letter dated April 1, 1993, James Mc

[3] The Department notes that no relief is proposed herein for the provision of services by ABPA to the Trust. The provision of services would be exempt from the prohibitions of section 406(a) provided the conditions of section 408(b)(2) are met. In this regard, the Department notes that the Trust renegotiated its administrative services contract with ABPA at approximately the same time as the negotiation of the Lease. The Department further wishes to point out that the proposal limits relief to the Lease transaction. Thus, no relief is proposed for any transaction that is part of a broader agreement, arrangement or understanding involving the Lease in which a fiduciary caused plan assets to be used in a manner designed to benefit a party in interest.

[4] The applicant represents that Prohibited Transaction Exemption (PTE) 76–1 and PTE 77–10 provide relief from 406 (a) and (b)(2) for leasing of office space from multiemployer plans to a participating employee organization, a participating employer or employer association, or another multiemployer plan with common trustees. The Department expresses no opinion in this proposed exemption on whether the leasing of such office space satisfies the terms and conditions of such exemptions.

Kenna, Executive Vice President of American Realty Advisors, represents that prior to 1992, that he was the president and a director of Am Cal, an independent real estate investment advisory service. Mr. Mc Kenna further represents that Am Cal was an investment manager with the meaning of Section 3(38) of the Act. Mr. Mc Kenna represents that both he and Am Cal were unrelated to, and independent of, ABPA during Am Cal's Fiduciary Period. Mr. Mc Kenna states that Am Cal understood and acknowledged its duties, responsibilities and liabilities in acting as a fiduciary with respect to the Trust.

Mr. Mc Kenna represents that once Am Cal became the investment manager for the Trust, it reviewed all the assets and investments of the Trust which included the Lease. Am Cal engaged Crane Realty Services (Crane), local commercial property manager, who further reviewed the terms of the Lease and other leases on the Property. Crane advised Mr. Mc Kenna that all of the leases of the Property, including the Lease, were ''at market.'' Additionally, Am Cal discussed the Property, the Lease and the other leases with the Negotiators to ascertain how the Property had been acquired and built out and how the Lease terms and conditions had been negotiated. In addition, Am Cal reviewed the Appraisal and the two reports prepared by Mr. Archer.

After obtaining the above information, Mr. Mc Kenna represents that Am Cal reviewed the terms of the Lease and all of the documents and relevant information in connection with the Lease. Mr. Mc Kenna states that the terms of the Lease compared favorably with the terms of similar transactions between unrelated parties and would be an arm's length transaction as evidenced by the information provided by Crane, the Negotiators, Am Cal's knowledge of commercial leasing conditions in Los Angeles County, the Appraisal and the two reports prepared by Mr. Archer.

Am Cal reviewed the investment portfolio of the Trust and considered the diversification of the Trust's assets as well as the liquidity needs of the Trust. Based on this analysis, Mr. Mc Kenna represents that Am Cal determined that the Lease was in the best interests of the Trust and its participants and beneficiaries. Mr. Mc Kenna states that Am Cal considered the Lease an appropriate and desirable investment for the Trust, based on the Lease's rate of return, the stability of the tenant, the character and diversification of the Trust's other assets, and the projected liquidity needs of the Trust. Mr. Mc Kenna represents that Am Cal, with the aide of Crane, monitored the Lease throughout Am Cal's Fiduciary Period.

During Am Cal's Fiduciary Period, Mr. Archer, by letter dated October 15, 1991, reviewed the Lease and the draft report on the factors considered in the Lease negotiations for Am Cal. Taking into consideration not only the rental, but other terms of the Lease which would typically be found in a lease entered into by unrelated parties in arm's length negotiations, Mr. Archer opined that the Lease was at fair market rent as of December of 1989, the commencement of the Lease. Mr. Archer stated that although he did not directly participate in the negotiation of the Lease or any of its particular terms, he did provide advice to Mr. Berry and Mr. Miller concerning the calculation of rent under a gross rental lease and on customary provisions and practices in office space leases.

Since July 1991, TDA, Inc. (TDA) has served as the independent, qualified fiduciary for the Trust with respect to the Lease. By letter dated November 11, 1992, Wayne Turner, a principal in TDA, represents that TDA is an investment manager with the meaning of Section 3(38) of the Act. Mr. Turner represents that both he and TDA are unrelated to, and independent of, ABPA. Mr. Turner states that TDA understands and acknowledges its duties, responsibilities and liabilities in acting as a fiduciary with respect to the Trust.

Mr. Turner represents that TDA has reviewed the terms of the Lease and all of the documents and relevant information in connection with the Lease. Mr. Turner states that the terms of the Lease compare favorably with the terms of similar transactions between unrelated parties and is an arm's length transaction as evidenced by the negotiations.

TDA has reviewed the current investment portfolio of the Trust as well as its diversification and liquidity needs. Based on this analysis, Mr. Turner represents that TDA believes that the Lease is in the best interests of the Trust and its participants and beneficiaries. Mr. Turner states that TDA considers the Lease to be an appropriate and desirable investment for the Trust.

Mr. Turner represents that TDA has monitored and will continue to monitor the Lease throughout its entire duration and will take any appropriate action necessary to protect the interests of the Trust and its participants and beneficiaries.

13. In summary, it is represented that the Lease transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act because: (a) The terms of the Lease have been, and will remain, at least as favorable to the Trust as those obtainable in an arm's length transaction with an unrelated party; (b) MHII, as independent, qualified fiduciary believed, prior to its commencement, that the Lease was in the best interests of the Trust and its participants and beneficiaries; (c) MHII, Am Cal, and TDA as independent, qualified fiduciaries have monitored and TDA will monitor the Lease on behalf of the Trust as well as the terms and the conditions of the exemption at all times; and (d) the rental charge by the Corporation under the Lease has and continues to be based upon the fair market rental value of the premises as determined by an independent, qualified appraiser.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

United Food and Commercial Workers Union Local 789 and St. Paul Food Employers Health Care Plan (the Plan) Located in Bloomington, Minnesota

[Application No. L–09933]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the proposed purchase of prescription drugs, at discount prices, by Plan participants and beneficiaries, from Supervalu Pharmacies, Inc. (SPI) and Cub Foods (Cub), parties in interest with respect to the Plan, provided the following conditions are satisfied: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of SPI and Cub; and (c) at least 50% of the preferred providers participating in the Preferred Pharmacy Network (PPN) which will be selling prescription drugs to the Plan's participants and beneficiaries will be unrelated to SPI and Cub.

Summary of Facts and Representations

1. The Plan is a multiemployer welfare benefit plan which has been in existence since 1966. The Plan was

established to provide health and welfare benefits including life, sickness, accident and other benefits for participants and their beneficiaries. The Plan is directed by a joint board of trustees composed of five individuals selected to represent the United Food and Commercial Workers Union Local 789 (the Union) and five individuals selected to represent the retail food employers. The Plan currently has approximately 3,135 participants and beneficiaries, and $2,209,380 in total assets.

2. SPI is a wholly owned subsidiary of Supervalu, Inc. (Supervalu), a large retail grocer in Minnesota. Cub, another wholly owned subsidiary of Supervalu, is also a large retail grocer with stores located primarily throughout the Twin City Metropolitan Area. SPI's are located in Cub stores. The applicant represents that Supervalu and Cub are both parties in interest to the Plan because they make contributions to the Plan on behalf of their employees that are participants in the Plan.

3. Under the Plan, participants have two alternative ways to receive the prescription drug benefit. One, a participant may have a prescription filled at an out-of-network pharmacy, pay the pharmacy's charge for the prescription at the time of dispensing, and submit a reimbursement claim to the Plan Administrator. The Plan would then reimburse the participant in full for the pharmacy's charge for the prescription, less the $5.00 participant co-payment. Two, a participant may have a prescription filled at a pharmacy within a preferred network, and pay only the $5.00 co-payment. The pharmacy then submits the claim for the remaining agreed-upon cost for the prescription directly to the Plan Administrator.

4. Effective January 1, 1994, the trustees of the Plan implemented the Plan's first prescription drug PPN in order to manage prescription drug price and utilization, manage related costs, provide ready participant access to courteous and reliable pharmacy services and professional advice, and to minimize or eliminate eligibility policing problems. The first Preferred Provider Agreement (the Agreement), the result of arm's-length negotiations, is between the Plan and Snyder Drug Stores, Inc. (Snyder). Snyder is not a party in interest with respect to the Plan.

5. Under the Agreement, Snyder agrees to provide prescription drugs to the Plan participants and their beneficiaries consistent with the Plan document and the Agreement at a specified reduced cost in exchange for the potential to realize an expanded customer base due to its status as a preferred pharmacy with respect to the Plan. The material elements of the Agreement are as follows:

(1) Snyder agrees to dispense covered prescription drugs, using generic drugs when available, within prescribed dosage units for one dispensing fee;

(2) The agreed upon dispensing fee is:

(a) The lesser of:

(i) The Usual and Customary charge for such prescription drug, or

(ii) The sum of the Drug Acquisition Cost plus the Professional Dispensing Fee.

The Drug Acquisition Cost for each prescription drug provided by the Pharmacy to an Eligible Person shall be defined to be the lesser of the following amounts:

(a) 90% of the AWP (average wholesale price) for such prescription drug; or

(b) The lowest stated maximum allowable cost (MAC) for such prescription drug on the most recently published pharmaceutical industry maximum allowable cost list, however, in no event will the MAC price exceed the Federal Upper Limits (as published by the Federal Government under the Federal Medical Entitlement Program).

The Professional Dispensing Fee shall equal $2.45 for each dispensing of a prescription drug in accordance with the Plan and the Agreement.

(3) Neither the Plan nor the participant is liable for the cost of any prescription drug dispensed contrary to the Agreement;

(4) Snyder will provide eligibility identification cards, maintain a current computerized eligibility list, and verify eligibility prior to dispensation;

(5) The Plan receives 67½ percent of formulary rebates received by Snyder based on the dispensing of each manufacturer's formulary drugs under the Plan and the Agreement. The Plan also receives quarterly formulary reports of formulary drugs dispensed and rebates received;

(6) The Plan has the right to inspect Snyder's records to audit claims and formulary rebates;

(7) Snyder must provide monthly prescription drug utilization reports; and

(8) The Plan has the right to terminate the Agreement upon a maximum of 60 days written notice.

6. The Plan's trustees have also negotiated an identical Agreement with SPI, thereby significantly expanding the PPN by including the pharmacies located in Cub stores. The terms of the SPI Agreement are identical to those of the Snyder Agreement. The applicant represents that the fees are determined by a combination of amounts objectively established by reference to industry resources and beyond the control or manipulation of SPI.

7. The applicant represents that the Plan wishes to enter the Agreement with SPI to maximize the benefits that can be provided to participants and their beneficiaries. Reducing the cost paid by the Plan for prescription drugs will enable the Plan to maintain its current level of benefits to the participants and their beneficiaries. Expanding the PPN to include SPI, thereby increasing the utilization of the PPN, will enable the Plan to obtain additional discounts on prescriptions currently dispensed out-of-network. The Plan will be able to receive even greater savings due to the negotiated fees rather than the usual and customary billing of out-of-network pharmacies. The applicant represents that it is projected that the Plan will realize an additional 14% reduction of its prescription drug expenses over last year by the addition of SPI to the PPN. The requested exemption is also in the interest of the Plan because preferred pharmacies will be more conveniently located as a result of the expanded PPN.

8. The applicant represents that the PPN will be at least 50% composed of preferred providers that are not affiliated with Supervalu or Cub. In addition, the applicant represents that one of the current trustees of the Plan, Mr. Markwell, is an employee of Cub. The applicant further represents that to address the potential conflict of interest, Mr. Markwell has in the past and will continue in the future, to recuse himself from all discussions and/or votes that relate to the operation or maintenance of the PPN. Thus, all Plan decisions with respect to the PPN, including any decision to enter into the Agreement with SPI, will be made by Plan fiduciaries unrelated to Supervalu or Cub.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act for the following reasons: (a) The terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party; (b) any decision made by the Plan with respect to the Agreement with SPI will be made by Plan fiduciaries independent of SPI and Cub; and (c) at least 50% of the preferred providers participating in the PPN which will be selling prescription drugs to the Plan's participants and beneficiaries will be unrelated to SPI and Cub.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The General Motors Hourly-Rate Employees' Pension Plan (the GM Hourly Plan); The General Motors Retirement Program for Salaried Employees (the GM Salaried Plan); The Saturn Individual Retirement Plan for Represented Team Members (the SIRP); The Saturn Personal Choices Retirement Plan for Non-Represented Team Members (the SPCRP;) and The Employees' Retirement Plan for GMAC Corporation (the GMAC Plan; all Five Plans Collectively, the GM Plans); The AT&T Pension Plan; and the AT&T Management Pension Plan (the AT&T Management Plan; Together, the AT&T Plans; all Seven Plans Collectively, the Plans) Located in Detroit, Michigan (the GM Plans), and in New York, New York (the AT&T Plans)

[Application Nos. D–09964 through D–09968]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the proposed granting to The Industrial Bank of Japan, Limited, New York Branch (IBJ), as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in The Morgan Stanley Real Estate Fund II, L.P. (the Partnership) owned by the Plans with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ.

Summary of Facts and Representations

1. The Partnership is a Delaware limited partnership the general partner of which is MSREF II, L.P. (the General Partner), a Delaware limited partnership the general partner of which is MSREF II, Inc., a wholly owned subsidiary of Morgan Stanley Group, Inc. or one or more of its affiliates. The Partnership is organized under an agreement (the Agreement) dated December 29, 1994. The Partnership has a term expiring on December 31, 2004, subject to extension by the General Partner for up to three successive one-year terms. The Partnership has been organized to make investments, including leveraged equity investments, in undervalued or inappropriately capitalized real estate assets and portfolios, and corporate real estate. Proceeds from the sale or refinancing of properties generally will not be reinvested, but will be distributed to the limited partners, so that the Partnership will be self-liquidating.

2. After execution of the Agreement, the General Partner sought capital commitments through private placement and has obtained, as a result, irrevocable, unconditional capital commitments in excess of $350,000,000 from 18 purchasers of limited partnership units (the Limited Partners). The Agreement requires Limited Partners to make capital contributions upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make a call for cash contributions, also known as a ''drawdown'', up to the total amount of the Limited Partner's capital commitment upon 15 days notice, with some limitations. The Partners' capital commitments are structured as irrevocable, unconditional and binding commitments to contribute equity when capital calls are made by the General Partner. The obligation of each Limited Partner to contribute the full amount of its capital commitment is secured by a security interest granted to the Partnership in the Limited Partner's partnership interest.

3. In the ordinary course of its business operations, it is contemplated that the Partnership will incur indebtedness in connection with many of its investments. This on-going need for credit will be provided by the Facility, a three-year arrangement for $300 million in revolving credit which will enable the Partnership to consummate investments quickly without the delay of separate arrangements for interim or permanent financing for each investment. The Facility is funded by the Lenders, represented by IBJ, which is also a participating Lender. IBJ serves as administrative agent for the Facility. The Facility is a non-recourse obligation of the Partnership which matures November 18, 1998 and which is secured by a security interest in the Limited Partners' capital commitments, the General Partner's right to make drawdowns and the Partnership's lien and security interest in each Limited Partner's partnership interest. As additional security, the Facility will require each Limited Partner to execute an agreement (the Security Agreement) granting to IBJ, for the benefit of each Lender, a security interest and lien in the Limited Partner's partnership interest, and covenanting with IBJ, for the benefit of the Lenders, that such Limited Partner will unconditionally honor any drawdown made by IBJ in accordance with the Agreement in lieu of the General Partner to the full extent of the Limited Partner's unfunded capital commitment.

4. The trusts which hold assets of the Plans (the Trusts) own limited partnership interests as Limited Partners in the Partnership. Some of the Lenders may be parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Plans with respect to Trust assets other than the Partnership interests. IBJ is requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Plans and the other Limited Partners with the largest interests in the Partnership and the extent of their respective capital commitments to the Partnership are described as follows:

(a) The GM Hourly Plan, a defined benefit plan with 599,262 participants as of September 30, 1993, and assets with a total value of approximately 21.6 billion dollars on that date. Assets of the GM Hourly Plan are held in the Third Plaza Trust (the TP Trust), of which Mellon Bank, N.A. is the trustee. Assets of the SIRP (a defined benefit plan with 7,178 participants as of September 30, 1993), the SPCRP (a defined benefit plan with 1,435 participants as of September 30, 1993), and the GMAC Plan (a defined benefit plan with 2,761 participants as of June 21, 1994), are also held in the TP Trust. The TP Trust has undertaken a total capital commitment of $75,000,000 to the Partnership.

(b) The GM Salaried Plan, a defined benefit pension plan with 223,262 participants as of September 30, 1993, and assets with a total value of approximately 20.8 billion dollars as of that date. Assets of the GM Salaried Plan are held in the Fourth Plaza Trust (the FP Trust), of which Mellon Bank, N.A. is the trustee. The FP Trust has undertaken a total capital commitment of $75,000,000 to the Partnership. The fiduciary responsible for authorizing and overseeing the GM Plans' investment in the Partnership and, subsequently, for monitoring such investment, is the General Motors Investment Management Corporation.

(c) The AT&T Pension Plan, a defined benefit pension plan with 261,788 participants as of December 31, 1993, and with assets of approximately 18.21 billion dollars as of that date, and the AT&T Management Plan, with 180,452 participants as of December 31, 1993 and with assets of approximately 20.03 billion dollars as of that date. Assets of the AT&T Plans are held in the AT&T Master Pension Trust (the AT&T Trust), of which State Street Bank and Trust Company is the trustee. The AT&T Trust has undertaken a total capital commitment of $150,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the AT&T Plans is David Feldman, Corporate Vice President, American Telephone & Telegraph Company Investment Management Organization.

(d) Limited Partners which are not ERISA-covered plans include:

(i) Wells Fargo & Company, which has undertaken a total capital commitment of $15,000,000.

(ii) Allstate Insurance Company, which has undertaken a total capital commitment of $40,000,000.

(iii) Morstar Realty, N.V., which has undertaken a total capital commitment of $15,000,000.

5. IBJ represents that the Partnership has obtained an opinion of counsel that the Partnership will constitute an ''operating company'' under the Department's plan asset regulations [29 CFR 2510.3–101(c)] if the Partnership is operated in accordance with the Agreement and the offering memorandum (the Offering) distributed in connection with the private placement of the limited partnership interests.[5]

6. IBJ represents that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. IBJ also represents that the obligatory execution of the Security Agreement by the Limited Partners for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. IBJ represents that the only direct relationship between any of the Limited Partners and any of the Lenders is the execution of the Security Agreements. All other aspects of the transaction, including the negotiation of all terms of the Facility, are exclusively between the Lenders and the Partnership. IBJ represents that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as Limited Partners to respond to drawdowns up to the total amount of each Plan's capital commitment to the Partnership.

7. IBJ represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to any Trust's investment in the Partnership and that IBJ is independent of and unrelated to those fiduciaries (the Trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by the Lenders. The Trust Fiduciaries represent that the Trust's investments in and capital commitments to the Partnership were made with the knowledge that each Limited Partner would be required subsequently to grant a security interest in the Partnership to the Lenders and to honor drawdowns made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to IBJ and the Lenders and that the investment by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

8. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (2) None of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (3) The Trust Fiduciaries invested in the Partnership on behalf of the Plans with the knowledge that the Security Agreements are required of all Limited Partners investing in the Partnership.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Eaton Corporation Share Purchase and Investment Plan (the Plan) Located in Cleveland, Ohio

[Application No. D–09978]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed extension of credit by Eaton Corporation (Eaton) to the Plan in the form of loans (the Loans) with respect to certain guaranteed investment contracts (collectively, the GICs); and (2) the repayment (the Repayments) by the Plan of all or a portion of amounts advanced to the Plan by Eaton on the terms described in the agreement governing such Loans, provided: (a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties; (b) no interest or other expenses will be incurred by the Plan in connection with the Loans; (c) the Loans would be made only when, and to the extent needed, to avoid penalties that would otherwise be incurred if the liquidation of one or more of the GICs is required, as determined by the Corporate Compensation Committee (the Plan Committee); (d) Repayments will be made only from payments made to the Plan as the GICs mature (the GIC Proceeds); (e) the Repayments will not exceed the total amount of the Loans; and (f) the Repayments will be waived to the extent that the Loans exceed the GIC Proceeds.

[5] The Department expresses no opinion herein as to whether the Partnership will constitute an operating company under the regulations at 29 CFR 2510.3–101.

EFFECTIVE DATE: If this proposed exemption is granted, it will be effective July 5, 1995.

Summary of Facts and Representations

1. Eaton, an Ohio corporation headquartered in Cleveland, is the Plan sponsor. The Plan is a defined contribution plan that had approximately 23,500 participants and assets of $731,839,175 as of December 30, 1993. The participants of the Plan are employees of Eaton or its subsidiaries. Contributions to the Plan are made by Eaton and by participants. Participant contributions are made pursuant to before-tax salary reduction agreements and/or after-tax payroll deduction agreements. Effective July 5, 1989, the portion of the Plan that is attributable to Eaton contributions is designed to be invested primarily in Eaton securities and constitutes an employee stock ownership plan (ESOP) within the meaning of Act section 407(d)(6). The Plan Committee is responsible for the general administration of the Plan, and the Plan's Investment Committee (the Investment Committee) has the exclusive authority to select the Plan's investment options and the underlying investment vehicles.

2. The Plan allows individual investment direction for that portion of participants' accounts which derives from participant contributions. Participants may direct the investment of that portion of their accounts into one or more of several investment funds maintained by the Plan. Currently, the funds available include the Fixed Income Fund, the Aggressive Growth Fund, the Balanced Fund, the Equity Fund, the International Fund, the Stock Index Fund and the Eaton Common Shares Fund (which invests primarily in Eaton securities). Participants may transfer their account balances among the investment funds once every 30 days. The Fixed Income Fund has its assets invested primarily in guaranteed investment contracts with insurance companies. The remainder of the Fixed Income Fund's assets are invested in government securities and corporate debt instruments. As of December 30, 1993, the Fixed Income Fund had assets of $127,881,436 and comprised 17.47% of the total assets of the Plan. Key Trust Company of Ohio, N.A. (Key Trust) currently serves as the trustee holding all assets of the Plan. Key Trust has been appointed by the Investment Committee as the Investment Manager of the Fixed Income Fund and the Stock Index Fund.

3. Among the guaranteed investment contracts currently held by the Fixed Income Fund are the GICs, which can be described as follows:

(a) Effective January 20, 1994, the Plan purchased Guaranteed Investment Contract No. GA 322 GIC (GIC–1) from Life Insurance Company of Georgia. The Plan purchased GIC–1 for $5 million. GIC–1 provides an annual guaranteed interest rate of 5.0% and matures on January 20, 1998.

(b) Effective November 20, 1992, the Plan purchased Guaranteed Investment Contract No. GA 299 GIC (GIC–2) from Life Insurance Company of Georgia. The Plan purchased GIC–2 for $10 million. GIC–2 provides an annual guaranteed interest rate of 6.15% and matures on November 20, 1996.

(c) Effective February 18, 1992, the Plan purchased Guaranteed Investment Contract No. GA–5265 (GIC–3) from Allstate Life Insurance Company. The Plan purchased GIC–3 for $10 million. GIC–3 provides an annual guaranteed interest rate of 7.65% and matures on April 1, 1997.

(d) Effective August 13, 1990, the Plan purchased Guaranteed Investment Contract No. GB 10020 (GIC–4) from Massachusetts Mutual Life Insurance Company. The Plan purchased GIC–4 for $20 million. GIC–4 provides an annual guaranteed interest rate of 9.37% and matures on August 16, 1995.

The GICs are valued at $47,605,741 and constitute 37.23% of the Fixed Income Fund's $127,881,436 of assets.[6] At maturity, the current accumulated book value of the GICs (Accumulated Book Value), defined as the initial deposit, plus interest at the contract rate, less any withdrawals during the term of the GIC, is to be paid to the Plan. All of the four GICs provide for a penalty upon early withdrawal. Of the Fixed Income Fund's assets, $55,267,367 (43.22%) are invested in other guaranteed investment contracts which do not impose penalties for early withdrawal.

4. Eaton has determined that Plan participants should be provided expanded investment options under the Plan. Eaton plans to allow each participant to transfer all or a portion of his/her account balance subject to participant direction into a new money market fund, the Money Market Fixed Income Fund, to be selected by the Investment Committee. The addition of this fund not only will provide participants with an alternative to the Fixed Income Fund, but will provide a mechanism for easing the transfer of account balances into and out of other funds available under the Plan. There is concern, however, that participants may be subject to adverse financial consequences if the amount of Plan assets transferred from the Fixed Income Fund exceeds the availability of assets in that Fund that can be liquidated without penalty. If that situation arises, the Plan would be forced to liquidate one or more of the GICs prior to maturity, thus triggering financial penalties and causing potential losses to Plan participants.

5. Accordingly, Eaton proposes to advance funds to the Plan up to the Accumulated Book Value of the GICs, as of July 5, 1995 (see rep. 7, below), plus additional interest at the contract rate that accrues through the date of any Loans that Eaton makes to the Plan. The Plan proposes to accept such Loans in order to enable participants to transfer their account balances currently invested in the Fixed Income Fund into the Money Market Fund, or any other fund, without incurring a penalty for premature liquidation of one or more of the GICs. The Loans would be non-interest bearing and would be available under a line of credit running from Eaton to the Plan. The Loans would be made only when, and to the extent, needed to avoid penalties that would otherwise be incurred if the liquidation of one or more of the GICs is required, as determined by the Plan Committee. The Plan will agree to repay the Loans to Eaton, without interest, only from the GIC Proceeds. No collateral would be required or given, and no other Plan assets would be used to make the Repayments.

6. To the extent that Eaton and the Plan ultimately recoup less than the amount of the Loans, Repayment would be waived. If GIC Proceeds remain after full Repayment of the Loans following maturity of the affected GICs, those amounts will be allocated on a proportional basis to any participant who then has an account in the Plan.

7. The Investment Committee proposes to add the Money Market Fund effective July 5, 1995, and accordingly expects to receive a significant quantity of participant requests to transfer into that fund as of that date. The Loans may therefore be required as of July 5, 1995 to avoid adverse financial consequences to participants if the demand for transfers out of the Fixed Income Fund for the period commencing July 5, 1995 and ending January 20, 1998 (when the last GIC matures) exceeds the Fixed

[6] These valuation figures were calculated using the contract value of the GICs, i.e., contributions made under the GICs plus interest at the contracts' stated rates, less Plan expenses directly attributable to the holding of the GICs. The figures were taken from the December 30, 1993 audited financial statements and therefore do not include the value of GIC–1, which was purchased effective January 20, 1994.

Income Fund's access to unrestricted assets. Thus, Eaton has requested that the exemption proposed herein be made effective July 5, 1995.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 408(a) of the Act because: (a) All terms of the transactions will be no less favorable to the Plan than those obtainable in arm's-length terms with unrelated parties; (b) the Plan will pay no interest or other expenses in connection with the Loans; (c) the Loans will enable Plan participants to transfer their account balances out of the Fixed Income Fund without incurring penalties for premature liquidation of the GICs; (d) Repayments will be made only from GIC Proceeds; (e) the Repayments will not exceed the total amount of the Loans; and (f) the Repayments will be made waived to the extent that the Loans exceed the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Rothschild, Incorporated (Rothschild) Located in New York, New York

[Application No. D–09993]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[7]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[8] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[9]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as

[7] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[8] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[9] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which Rothschild or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T.);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U.);

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) Rothschild;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Rothschild; or

(3) Any member of an underwriting syndicate or selling group of which Rothschild or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)-(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Summary of Facts and Representations

1. Rothschild and its affiliates provide a broad range of financial services, including mergers and acquisitions, restructuring, asset management and a variety of specialist financial services for both domestic and international clients. Rothschild conducts operations from its executive office in New York City. The applicant represents that several of Rothschild's officers have had extensive experience in the fields of mortgage-backed and asset-backed securities.

When acting as lead managing underwriter or placement agent, Rothschild will conduct extensive due diligence with respect to each offering of certificates. In general, Rothschild's due diligence efforts will concern four basic areas: first, the originator's or unrelated lender's underwriting policies and procedures for originating or purchasing receivables; second, the validity and enforceability of the secured claim or lien on the underlying collateral as represented by the receivable; third, the originator's or unrelated lender's recordkeeping systems; and fourth, the originator's or unrelated lender's documents kept on file with respect to each receivable.

In general, Rothschild's procedures are as follows: Rothschild conducts an extensive examination of the originator or unrelated lender's underwriting practices to ensure that they conform with stated policies and procedures, and that there are periodic reviews of those practices by the originator's or unrelated lender's auditors. Rothschild's examination includes a review of written materials and interviews with the officers in charge of administrating the underwriting policies and procedures. Rothschild and/or its attorneys will also review the legal documentation creating the security interest in each underlying collateral asset. Rothschild's analysts will examine the originator's or unrelated lenders recordkeeping systems to verify, among other things, its capabilities with respect to the collection of amounts due and payable for the receivables sold to investors. In most cases, Rothschild also examines receivable files, selected at random, to verify that files are complete and the dates in the file conform to the recordkeeping systems.

Trust Assets

2. Rothschild seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family residential or commercial mortgage investment trusts;[10] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[11]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[12]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Rothschild, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. The majority of the public offerings of certificates made to date have been underwritten on an agency basis. However, Rothschild may in the future become involved in public offerings of certificates underwritten on either a firm commitment or a best efforts basis. In addition, Rothschild anticipates that it may privately place certificates on both a firm commitment and an agency basis. Rothschild may also act as the lead underwriter for a syndicate of securities underwriters. Rothschild may also act as the servicer or seller to the trust of the receivables or the trust sponsor.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Rothschild requests exemptive relief for two types of multi-class certificates: "Strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[13]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal,

[10] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–l are met. Rothschild requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Rothschild has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[11] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[12] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[13] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[14]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates. Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Rothschild, the trust sponsor or the servicer. Rothschild represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor or the trust as specified in the pooling and servicing agreement. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be ‘‘subserviced’’ by their respective originators and for a single entity to ‘‘master service’’ the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Rothschild. In other cases, however, affiliates of Rothschild may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for receivables sold to the trust. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and

[14] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[15] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer may be required to pay the administrative expenses of servicing the trust, including the trustee's fee, out of its servicing compensation, or it may be reimbursed for all or a portion of its expenses by the trust.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

[15] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. Rothschild and any other participating underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would normally consist of the difference between what Rothschild receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee may also take the form of an agency commission paid by the sponsor. Such fees are negotiated at arm's-length with the sponsor, originator or unrelated lender and are affected by fees in comparable offerings.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or the creation of a class of certificates with subordinated cash flow) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) out of liquidation proceeds, (c) from the credit support provider (which may be itself) or, (d) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. However, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report

will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is Rothschild's normal policy to facilitate sales, including, without limitation, sales made in accordance with Rule 144A under the Securities Act of 1933, by investors who purchase certificates if Rothschild has acted as agent or principal in the original private placement of the certificates and if such investors request Rothschild's assistance. In the case of a trust that offers and sells certificates in a registered public offering, it is anticipated that Rothschild would generally attempt to make a market for securities for which it is lead or co-managing underwriter.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[16]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Rothschild represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[17] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of

[16] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[17] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Rothschild or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

the Act.[18] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Rothschild represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Rothschild represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Rothschild represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

NOTICE TO INTERESTED PERSONS: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of May, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–12502 Filed 5–19–95; 8:45 am]

BILLING CODE 4510–29–P

[18] The applicant represents that where a trust sponsor is an affiliate of Rothschild, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Rothschild is not a fiduciary with respect to plan assets to be invested in certificates.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–267]

Environmental Assessment and Finding of No Significant Impact; Public Service Company of Colorado Fort St. Vrain Nuclear Generating Station

The Nuclear Regulatory Commission (the NRC) is considering the issuance of an exemption from the requirements of 10 CFR 50.54(w) to maintain onsite property insurance to the Public Service Company of Colorado (PSC or the licensee) for the Fort St. Vrain Nuclear Generating Station (FSV) pursuant to the requirements of 10 CFR 50.12.

Environmental assessment

Identification of Proposed Action

The exemption will delete the requirements of 10 CFR 50.54(w) for the licensee to maintain onsite property insurance. FSV is permanently shut down and all the fuel assemblies are currently stored in an independent spent fuel storage installation (ISFSI), and the ISFSI is licensed under 10 CFR Part 72. In addition, decommissioning of FSV is approximately 65 percent complete, and PSC estimates that the facility license will be terminated and the facility released for unrestricted use in 1996.

The Need for the Proposed Action

The exemption is needed to eliminate the requirements of 10 CFR 50.54(w), which are appropriate for an operating plant but are not needed at the shutdown FSV. Granting the proposed exemption would reduce unnecessary costs for PSC.

Environmental Impact of the Proposed Action

The proposed action to eliminate the requirements for the licensee to have in effect and to continue to maintain onsite property insurance will have no environmental impact because FSV is permanently shut down, defueled, and 65 percent decommissioned. Thus, the risk of an accident requiring reactor stabilization or extensive decontamination does not exist at FSV. In addition, for the worst-case accident at FSV, the radiological release from the accident is a whole-body dose to an individual of 8.30 mrem. This dose is considerably less than 1 percent of the U.S. Environmental Protection Agency's ''Protective Action Guidelines'' dose of 1000 mrem that requires protective action.

The requested exemption would not authorize construction or operation, would not authorize a change in licensed activities, and would not effect changes in the permitted types or amounts of radiological effluent. With regard to potential nonradiological impacts, the NRC concludes that no measurable radiological or nonradiological impacts are associated with the exemption.

Alternatives to the Proposed Action

Because the NRC concluded that there are no significant environmental effects